



OKLAHOMA WORKERS' COMPENSATION COMMISSION

1915 N STILES AVE STE 231 · OKLAHOMA CITY, OKLAHOMA 73105 · (405) 522-3222 · WCC.OK.GOV

Chairman Mark Liotta · Commissioner Jordan Russell · Commissioner Megan Tilly · Executive Director Hopper Smith

TO: Mark Liotta, Chairman
Jordan Russell, Commissioner
Megan Tilly, Commissioner
Hopper Smith, Interim Executive Director

CC: Alexander Watkins
Lauren Hammonds Johnson

FROM: James Lawson II

DATE: February 9, 2021

SUBJECT: Request to Fully Release the Security Deposit for Genco Distribution System Inc., Former Own Risk Permit #18906

Genco Distribution System Inc. (the Company), former own risk permit #18906, was a self-insured employer in the Own Risk program until January 1, 2012. The Company has petitioned the Commission to fully release the Company's security deposit on file. The Commission currently holds a \$500,000 Letter of Credit, issued by PNC Bank., as security deposit.

All claims have been closed out and they all have passed the statute of limitations for reopening. The Company has complied with Commission Rule 810:25-9-19.

Attached, you will find:

1. A copy of the company's loss run report.
2. Request for full release email.

Recommendation: I recommend the Commission vote to fully release the security deposit of Genco Distribution System Inc. of \$500,000.



Title 85A. Workers' Compensation

📖 Oklahoma Statutes Citationized

📖 Title 85A. Workers' Compensation

📖 Chapter 1 - Administrative Workers' Compensation Act

📖 Section 69 - Statute of Limitations - Initial Claim - Claim for Additional Compensation - Failure to File - Exception

Superseded

Superseded
Effective: 05/28/2019

Superseded

Cite as: 85A O.S. § 69 (OSCN 2021)

A. Time for Filing.

1. A claim for benefits under this act, other than an occupational disease, shall be barred unless it is filed with the Commission within one (1) year from the date of the injury. If during the one-year period following the filing of the claim the employee receives no weekly benefit compensation and receives no medical treatment resulting from the alleged injury, the claim shall be barred thereafter. For purposes of this section, the date of the injury shall be defined as the date an injury is caused by an accident as set forth in paragraph 9 of Section 2 of this act.

2. a. A claim for compensation for disability on account of injury which is either an occupational disease or occupational infection shall be barred unless filed with the Commission within two (2) years from the date of the last injurious exposure to the hazards of the disease or infection.

b. A claim for compensation for disability on account of silicosis or asbestosis shall be filed with the Commission within one (1) year after the time of disablement, and the disablement shall occur within three (3) years from the date of the last injurious exposure to the hazard of silicosis or asbestosis.

c. A claim for compensation for disability on account of a disease condition caused by exposure to X-rays, radioactive substances, or ionizing radiation only shall be filed with the Commission within two (2) years from the date the condition is made known to an employee following examination and diagnosis by a medical doctor.

3. A claim for compensation on account of death shall be barred unless filed with the Commission within two (2) years of the date of such a death.

4. If within six (6) months after the filing of a claim for compensation no bona fide request for a hearing has been made with respect to the claim, the claim may, on motion and after hearing, be dismissed with prejudice.

B. Time for Filing Additional Compensation.

1. In cases in which any compensation, including disability or medical, has been paid on account of injury, a claim for additional compensation shall be barred unless filed with the Commission within one (1) year from the date of the last payment of disability compensation or two (2) years from the date of the injury, whichever is greater.

2. The statute of limitations provided in this subsection shall not apply to claims for the replacement of medicine, crutches, ambulatory devices, artificial limbs, eyeglasses, contact lenses, hearing aids, and other apparatus permanently or indefinitely required as the result of a compensable injury, when the employer or carrier previously furnished such medical supplies, but replacement of such items shall not constitute payment of compensation so as to toll the statute of limitations.

C. A claim for additional compensation shall specifically state that it is a claim for additional compensation. Documents which do not specifically request additional benefits shall not be considered a claim for additional compensation.

D. If within six (6) months after the filing of a claim for additional compensation no bona fide request for a hearing has been made with respect to the claim, the claim shall be dismissed without prejudice to the refiling of the claim within the limitation period specified in subsection B of this section.

E. Failure to File. Failure to file a claim within the period prescribed in subsection A or B of this section shall not be a bar to the right to benefits hereunder unless objection to the failure is made at the first hearing on the claim in which all parties in interest have been given a reasonable notice and opportunity to be heard by the Commission.

F. Persons under Disability.

1. Notwithstanding any statute of limitation provided for in this act, when it is established that failure to file a claim by an injured employee or his or her dependents was induced by fraud, the claim may be filed within one (1) year from the time of the discovery of the fraud.

2. Subsections A and B of this section shall not apply to a mental incompetent or minor so long as the person has no guardian or similar legal representative. The limitations prescribed in subsections A and B of this section shall apply to the mental incompetent or minor from the date of the appointment of a guardian or similar legal representative for that person, and when no guardian or similar representative has been appointed, to a minor on reaching the age of majority.

G. A latent injury or condition shall not delay or toll the limitation periods specified in this section. This subsection shall not apply to the limitation period for occupational diseases specified in paragraph 2 of subsection A of this section.

Historical Data

Laws 2013, SB 1062, c. 208, § 69, eff. February 1, 2014.

Citationizer[®] Summary of Documents Citing This Document

Cite ***Name Level***

None Found.

Citationizer: Table of Authority

Cite ***Name Level***

None Found.



Title 85A. Workers' Compensation

Oklahoma Statutes Citationized

Title 85A. Workers' Compensation

Chapter 1 - Administrative Workers' Compensation Act

Section 69 - Time for Filing - Failure to File - Persons under Disability

Cite as: 85A O.S. § 69 (OSCN 2021)

A. Time for Filing.

1. A claim for benefits under this act, other than an occupational disease, shall be barred unless it is filed with the Workers' Compensation Commission within one (1) year from the date of the injury or, if the employee has received benefits under this title for the injury, six (6) months from the date of the last issuance of such benefits. For purposes of this section, the date of the injury shall be defined as the date an injury is caused by an accident as set forth in paragraph 9 of [Section 2](#) of this title.

2. a. A claim for compensation for disability on account of injury which is either an occupational disease or occupational infection shall be barred unless filed with the Commission within two (2) years from the date of the last injurious exposure to the hazards of the disease or infection.

b. A claim for compensation for disability on account of silicosis or asbestosis shall be filed with the Commission within one (1) year after the time of disablement, and the disablement shall occur within three (3) years from the date of the last injurious exposure to the hazard of silicosis or asbestosis.

c. A claim for compensation for disability on account of a disease condition caused by exposure to X-rays, radioactive substances, or ionizing radiation only shall be filed with the Commission within two (2) years from the date the condition is made known to an employee following examination and diagnosis by a medical doctor.

3. A claim for compensation on account of death shall be barred unless filed with the Commission within two (2) years of the date of such a death.

4. If a claim for benefits has been timely filed under paragraph 1 of this subsection and the employee does not:

a. make a good-faith request for a hearing to resolve a dispute regarding the right to receive benefits, including medical treatment, under this title within six (6) months of the date the claim is filed, or

b. receive or seek benefits, including medical treatment, under this title for a period of six (6) months,

then on motion by the employer, the claim shall be dismissed with prejudice.

B. Failure to File. Failure to file a claim within the period prescribed in subsection A of this section shall not be a bar to the right to benefits hereunder unless objection to the failure is made at the first hearing on the claim in which all parties in interest have been given a reasonable notice and opportunity to be heard by the Commission.

C. Persons under Disability.

1. Notwithstanding any statute of limitation provided for in this act, when it is established that failure to file a claim by an injured employee or his or her dependents was induced by fraud, the claim may be filed within one (1) year from the time of the discovery of the fraud.

2. Subsection A of this section shall not apply to a mental incompetent or minor so long as the person has no guardian or similar legal representative. The limitations prescribed in subsection A of this section shall apply to the mental incompetent or minor from the date of the appointment of a guardian or similar legal representative for that person, and when no guardian or similar representative has been appointed, to a minor on reaching the age of majority.

D. A latent injury or condition shall not delay or toll the limitation periods specified in this section. This subsection shall not apply to the limitation period for occupational diseases specified in paragraph 2 of subsection A of this section.

Historical Data

Laws 2013, SB 1062, c. 208, § 69, eff. February 1, 2014; Amended by Laws 2019, HB 2367, c. 476, § 27, emerg. eff. May 28, 2019 (superseded document available).

Citationizer® Summary of Documents Citing This Document

<i>Cite Name</i>	<i>Level</i>	
Oklahoma Court of Civil Appeals Cases		
<i>Cite</i>	<i>Name</i>	<i>Level</i>
<u>2018 OK CIV APP 43, 418 P.3d 713</u>	<u>ROLLED ALLOYS, INC. v. WILSON</u>	<i>Discussed at Length</i>
<u>2018 OK CIV APP 64, 429 P.3d 354</u>	<u>GREEN COUNTRY PHYSICAL THERAPY L.P. v. SYLVESTER</u>	<i>Discussed at Length</i>
<u>2020 OK CIV APP 27, 466 P.3d 636</u>	<u>SMITH v. WHATABURGER RESTAURANT</u>	<i>Discussed at Length</i>
Oklahoma Supreme Court Cases		
<i>Cite</i>	<i>Name</i>	<i>Level</i>
<u>2015 OK 12, 347 P.3d 293</u>	<u>MULTIPLE INJURY TRUST FUND v. CELLINO</u>	<i>Cited</i>

Citationizer: Table of Authority

<i>Cite</i>	<i>Name</i>	<i>Level</i>
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None Found.

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February 3, 2021

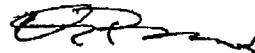
Mr. Hopper Smith
Executive Director
Workers' Compensation Commission
1915 North Stiles Avenue
Oklahoma City, Oklahoma 73105-4918

Dear Executive Director Smith:

Please find enclosed for your consideration a Petition to Amend Oklahoma Workers' Compensation Rule 810-10-5-85 pursuant to Rule 810:1-1-4. Pursuant to said Rule, please present the Petition at the next regularly scheduled meeting of the Oklahoma Workers' Compensation Commission for consideration and disposition. I look forward to notice of date, time, and place of such meeting, again, pursuant to the Rule.

Thank you in advance of your consideration. Should you have any questions or comment, please contact me.

Sincerely,
BULLARD & ASSOCIATES



Donald A. Bullard

DAB/vb

cc: Kinsey Westwood
Oklahoma State Chamber of Commerce
330 N. E. 10th Street
Oklahoma City, OK 73104

**PETITION TO AMEND OKLAHOMA WORKERS'
COMMISSION COMPENSATION RULE 810:10-5-85**

COMES NOW the Oklahoma State Chamber of Commerce by and through Donald A. Bullard, Chairman of the Workers' Compensation Committee, and pursuant to the Oklahoma Workers' Compensation Commission Rule 810:1-1-4 hereby petitions the Oklahoma Workers' Compensation Commission (hereinafter "Commission") to amend and, in part repeal, Rule 810:10-5-85 (hereinafter "the Rule"). In brief summary, current rule 810:10-5-85 directly contradicts 85A O.S. §69(A)(4). The current rule is reflective of 85A O.S. §69 as written prior to the statutory amendments effective May 28, 2019.

Initially, the Rule at (b)(1) continues to provide discretion to the Commission to determine if a claim is to be dismissed by use of the term "may" whereas the amended Statute *mandates* dismissal by use of the term "shall".

Further, the Rule at (b)(1) fails to incorporate the statutory basis for dismissal of claims to include the failure to file a good faith request for hearing "by the employee" within six (6) months of the filing of the claim or to dismiss with prejudice if the employee fails to "receive or seek benefits, including medical treatment for a period six (6) months".

Additionally, the Rule at (b)(2) continues to provide for dismissal of a claim for additional compensation "without prejudice to the refileing of the claim". The current statute draws no distinction as to whether the claim is for *initial* or *additional* compensation. Furthermore, the current Statute mandates the dismissal be made "with prejudice," again based upon the use of the term "shall." 85A O.S. §69(A)(4)(a) and (b).

Finally, the Rule directs reference to a claim for additional compensation as "described in 85A O.S. §69(B)(C)(D)". The referenced statutes were repealed May 28, 2019 and no longer exist in this context.

ARGUMENT

Statutory amendments to 85A became effective May 28, 2019 included the following revisions to §69.

85A O.S. §69
(Effective May 28, 2019)

A. Time for Filing.

1. A claim for benefits under this act, other than an occupational disease, shall be barred unless it is filed with the Workers' Compensation Commission within one (1) year from the date of the injury or, if the employee has received benefits under this

title for the injury, six (6) months from the date of the last issuance of such benefits. ~~If during the one year period following the filing of the claim the employee receives no weekly benefit compensation and receives no medical treatment resulting from the alleged injury, the claim shall be barred thereafter.~~ For purposes of this section, the date of the injury shall be defined as the date an injury is caused by an accident as set forth in paragraph 9 of Section 2 of this ~~act~~ title.

2. a. A claim for compensation for disability on account of injury which is either an occupational disease or occupational infection shall be barred unless filed with the Commission within two (2) years from the date of the last injurious exposure to the hazards of the disease or infection.

b. A claim for compensation for disability on account of silicosis or asbestosis shall be filed with the Commission within one (1) year after the time of disablement, and the disablement shall occur within three (3) years from the date of the last injurious exposure to the hazard of silicosis or asbestosis.

c. A claim for compensation for disability on account of a disease condition caused by exposure to X-rays, radioactive substances, or ionizing radiation only shall be filed with the Commission within two (2) years from the date the condition is made known to an employee following examination and diagnosis by a medical doctor.

3. A claim for compensation on account of death shall be barred unless filed with the Commission within two (2) years of the date of such a death.

4. If within six (6) months after the filing of a claim for compensation no bona fide request for a hearing has been made with respect to the claim, a claim for benefits has been timely filed under paragraph 1 of this subsection and the employee does not: a. make a good faith request for a hearing to resolve a dispute regarding the right to receive benefits, including medical treatment, under this title within six (6) months of the date the claim is filed, or b. receive or seek benefits, including medical treatment, under this title for a period of six (6) months, then on motion by the employer, the claim may, on motion and after hearing, shall be dismissed with prejudice.

B. Time for Filing Additional Compensation.

1. In cases in which any compensation, including disability or medical, has been paid on account of injury, a claim for additional compensation shall be barred unless filed with the Commission within one (1) year from the date of the last payment of disability compensation or two (2) years from the date of the injury, whichever is greater.

2. The statute of limitations provided in this subsection shall not apply to claims for the replacement of medicine, crutches, ambulatory devices, artificial limbs,

eyeglasses, contact lenses, hearing aids, and other apparatus permanently or indefinitely required as the result of a compensable injury, when the employer or carrier previously furnished such medical supplies, but replacement of such items shall not constitute payment of compensation so as to toll the statute of limitations.

C. A claim for additional compensation shall specifically state that it is a claim for additional compensation. Documents which do not specifically request additional benefits shall not be considered a claim for additional compensation.

D. If within six (6) months after the filing of a claim for additional compensation no bona fide request for a hearing has been made with respect to the claim, the claim shall be dismissed without prejudice to the refiling of the claim within the limitation period specified in subsection B of this section.

~~E.~~ Failure to File. Failure to file a claim within the period prescribed in subsection A ~~or~~ ~~B~~ of this section shall not be a bar to the right to benefits hereunder unless objection to the failure is made at the first hearing on the claim in which all parties in interest have been given a reasonable notice and opportunity to be heard by the Commission.

F. C. Persons under Disability.

1. Notwithstanding any statute of limitation provided for in this act, when it is established that failure to file a claim by an injured employee or his or her dependents was induced by fraud, the claim may be filed within one (1) year from the time of the discovery of the fraud.

2. ~~Subsections~~ ~~Subsection A and B~~ of this section shall not apply to a mental incompetent or minor so long as the person has no guardian or similar legal representative. The limitations prescribed in ~~subsections~~ subsection A and B of this section shall apply to the mental incompetent or minor from the date of the appointment of a guardian or similar legal representative for that person, and when no guardian or similar representative has been appointed, to a minor on reaching the age of majority.

G. D. A latent injury or condition shall not delay or toll the limitation periods specified in this section. This subsection shall not apply to the limitation period for occupational diseases specified in paragraph 2 of subsection A of this section.

The Rule as currently provided is as follows:

810:10-5-85. Dismissals

(a) Generally. Except as otherwise required by law, unless good cause is shown, dismissal of a complaint shall be without prejudice.

(b) Untimely prosecution or failure to prosecute claim.

(1) The Commission, on motion and after notice and hearing, *may* dismiss a claim for compensation with prejudice if no bona fide request for hearing with respect to the claim has been made within six (6) months of the filing of claim. The Commission may set such claims on a disposition docket.

(2) The Commission shall dismiss a claim for additional compensation *without prejudice* to refiling of the claim within the limitation period specified in 85A O.S. § 69(B), if no bona fide request for hearing with respect to the claim has been filed within six (6) months after the filing of the claim for additional compensation. A **claim for additional compensation is described in 85A O.S. § 69(B)(C)(D)** (*Emphasis Added*)

In short, the statute has failed to be amended to reflect the statutory amendments of May 28, 2019. The statute now mandates the dismissal "*shall*" be *with prejudice* whereas the rule provides the dismissal "*may*" be with prejudice. The Rule fails to include the requirement the request for hearing must be from "*the employee*" while also failing to note the two conditions upon which a dismissal shall be required. Finally, the Rule continues to reference a dismissal process that differs depending whether it is a "claim for additional compensation" as defined in sections B, C, and D. Sections B, C, and D headed "Claim for Additional Compensation", were repealed effective May 28, 2019.

SUMMARY

Notwithstanding the amendments effective May 28, 2019, the Rule continues to state in subsection (b)(1) the Commission "may" dismiss a claim for compensation with prejudice while failing to include the basis for requesting dismissal or noting the request must be made by "the employee". Subsection (b)(2) of the Rule continues to provide the Commission shall dismiss a claim for additional compensation "without prejudice" and, finally, that a claim for additional compensation is as described in 85A O.S. § 69(B)(C)(D) when those sections no longer exist.

PROPOSED AMENDMENT TO OKLAHOMA WORKERS' COMPENSATION COMMISSION RULE 810:10-5-85

We propose the Commission amend Rule 810:10-5-85 to conform to the Statutory Amendments effective May 28, 2019 to 85A O.S. § 69 as follows:

810:10-5-85. Dismissals

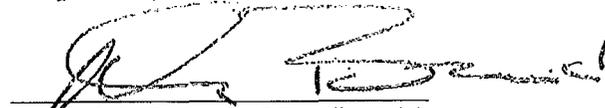
- (a) Generally. Except as otherwise required by law, unless good cause is shown, dismissal of a complaint shall be without prejudice.
- (b) Untimely prosecution or failure to prosecute claim.

(1) Pursuant to 85A O.S. §69(A)(4), the Commission, on motion of the employer and after notice and hearing, ~~may~~ shall dismiss a claim for compensation with prejudice to the refiling of the claim if (1) no bona fide request for hearing with respect to the claim has been made by the employee within six (6) months of the filing of claim or (2) the employee does not receive or seek benefits, including medical treatment for a period of six (6) months. The Commission may set such claims on a disposition docket.

(2) ~~The Commission shall dismiss a claim for additional compensation without prejudice to refiling of the claim within the limitation period specified in 85A O.S. § 69(B), if no bona fide request for hearing with respect to the claim has been filed within six (6) months after the filing of the claim for additional compensation. A claim for additional compensation is described in 85A O.S. § 69(B)(C)(D)~~

WHEREFORE, premises considered, the Oklahoma State Chamber of Commerce by and through Donald A. Bullard, respectfully requests the Commission amend the rules as currently provided and as proposed herein to avoid unnecessary confusion and litigation due to the blatant conflict between Commission Rule 810:10-5-85 and the requirements of Oklahoma Statute 85A O.S. § 69.

Respectfully submitted;

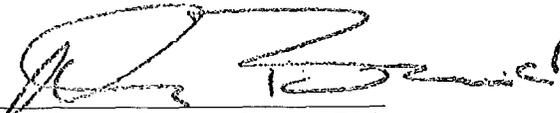


Donald A. Bullard, OBA #10746
Oklahoma State Chamber of Commerce
Workers' Compensation Committee
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CERTIFICATE OF MAILING

Donald A. Bullard hereby certifies that a true and correct copy of the foregoing Petition to Amend Oklahoma Workers' Commission Compensation Rule 810:10-5-85 was mailed, postage prepaid, on the _____ day of February, 2021 to:

Mr. Hopper Smith
Executive Director
Oklahoma Workers' Compensation Commission
1915 North Stiles Avenue,
Oklahoma City, Oklahoma 73105



Donald A. Bullard, OBA #10746
Bullard & Associates, P.L.L.C.

Oklahoma Workers' Compensation Commission
Select Administrative Rules

810:1-1-4. Petitions to promulgate, amend or repeal rules

(a) Individuals or organizations who wish to petition the Commission to promulgate, amend or repeal a rule must submit a written request to the Executive Director, 1915 North Stiles Avenue, Oklahoma City, Oklahoma 73105. The request must include:

- (1) A statement in support of the proposal made. The supporting statement should refer to the statutory basis for the proposal and include any specific objections to existing rules or practices, and set forth the policy considerations which support adoption of the proposal;
- (2) The name, address and telephone number of the person making the request;
- (3) The name, address and telephone number of the agency or organization the person represents, if any;
- (4) The number used to identify the rule if the request is to amend or repeal an existing rule; and
- (5) The proposed language if the request is to amend an existing rule or adopt a new rule.

(b) The Executive Director or the Executive Director's designee will present such petition at the next regularly scheduled meeting of the Commission for consideration and disposition. The petitioner shall be given reasonable notice of the date, time and place of such meeting, and shall be informed in writing within a reasonable period of time of the Commission's ruling in the matter.

[Source: Added at 31 Ok Reg 465, eff 2-4-14 (emergency); Added at 32 Ok Reg 1458, eff 8-27-15]

810:10-5-85. Dismissals

- (a) **Generally.** Except as otherwise required by law, unless good cause is shown, dismissal of a complaint shall be without prejudice.
- (b) **Untimely prosecution or failure to prosecute claim.**
- (1) The Commission, on motion and after notice and hearing, may dismiss a claim for compensation with prejudice if no bona fide request for hearing with respect to the claim has been made within six (6) months of the filing of claim. The Commission may set such claims on a disposition docket.
 - (2) The Commission shall dismiss a claim for additional compensation without prejudice to refiling of the claim within the limitation period specified in 85A O.S. § 69(B), if no bona fide request for hearing with respect to the claim has been filed within six (6) months after the filing of the claim for additional compensation. A claim for additional compensation is described in 85A O.S. § 69(B)(C)(D).
- (c) **Request of party filing claim for compensation.** Voluntary dismissal of a claim for compensation pursuant to a request of the worker is authorized in 85A O.S. § 108. This law gives the injured worker, upon order of the Commission and payment of the \$140.00 final award fee provided for in 85A O.S. § 118, the right to dismiss the worker's claim for compensation at any time before final submission of the case to the Commission for decision. The worker's application for dismissal shall be made on a Commission prescribed CC-Form-100 upon payment of the \$140.00 final award fee or execution of a payment plan approved by the Commission's business office. The dismissal shall be without prejudice, unless the Commission's order on the CC-Form-100 clearly identifies the dismissal as with prejudice. Prior to entering an order for dismissal with prejudice, the Commission may require notice and an evidentiary hearing.

[Source: Added at 31 Ok Reg 468, eff 2-4-14 (emergency); Added at 32 Ok Reg 1461, eff 8-27-15; Amended at 34 Ok Reg 2207, eff 9-11-17]